

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

<b>RITA MENDEZ,</b>	:	
<b>Plaintiff</b>	:	<b>CIVIL ACTION NO. 3:18-391</b>
<b>v.</b>	:	<b>(MANNION, D.J.)</b>
<b>MCDONALD'S RESTAURANT,</b>	:	
<b>Defendant</b>	:	

**ORDER**

Pending before the court is the report of Magistrate Judge William I. Arbuckle which recommends that the plaintiff's complaint be dismissed without further leave to amend pursuant to Fed.R.Civ.P. 41. (Doc. 10). Although the plaintiff filed correspondence subsequent to Judge Arbuckle's report, (Doc. 11), she has not filed any substantive objections to the report.

By way of relevant background, the plaintiff filed the instant action, *pro se*, on February 6, 2018. (Doc. 1). Judge Arbuckle gave the plaintiff's complaint preliminary consideration pursuant to the provisions of 28 U.S.C. §1915(e)(2) and found that, even liberally construing the plaintiff's *pro se* complaint, the complaint fails to state a claim upon which relief can be granted. As such, by report dated April 20, 2018, Judge Arbuckle recommend that the plaintiff's complaint be dismissed, without prejudice, to allow the plaintiff an opportunity to file an amended complaint which properly identifies her claim(s) and sets forth well-pleaded facts which comply with the requirements of Fed.R.Civ.P. 8. (Doc. 4). By order dated December 10, 2018,

the undersigned adopted Judge Arbuckle's report and directed the plaintiff to file an amended complaint on or before January 2, 2019. (Doc. 7).

Rather than filing an amended complaint, on December 17, 2018, the plaintiff filed a motion for appointment of counsel, (Doc. 8), which Judge Arbuckle denied. (Doc. 9). The plaintiff was reminded that her case would be dismissed unless she filed a timely amended complaint. With the time for doing so having passed, the plaintiff failed to file an amended complaint. On March 14, 2019, Judge Arbuckle issued the instant report, in which he recommends that the plaintiff's original complaint be dismissed without further leave to amend pursuant to Fed.R.Civ.P. 41 finding that the Poulis<sup>1</sup> factors weigh in favor of such a disposition. (Doc. 10). As indicated, the plaintiff has failed to file any substantive objections to Judge Arbuckle's report.

When no objections are filed to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether

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<sup>1</sup>Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863, 868 (3d Cir. 1984).

timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

The court has reviewed the reasons presented by Judge Arbuckle in support of his recommendation and agrees with the sound reasoning that led Judge Arbuckle to the conclusions in his report. The court agrees that the Poulis factors weigh in favor of dismissing the plaintiff's complaint pursuant to Fed.R.Civ.P. 41. As such, the undersigned finds no clear error on the face of the record and will adopt Judge Arbuckle's report in its entirety.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- (1) The report and recommendation of Judge Arbuckle, (**Doc. 10**), is **ADOPTED IN ITS ENTIRETY**.
- (2) The plaintiff's complaint is **DISMISSED** without further leave to amend pursuant to Fed.R.Civ.P. 41.
- (3) The Clerk of Court is **DIRECTED TO CLOSE THIS CASE**.

s/ *Malachy E. Mannion*  
**MALACHY E. MANNION**  
United States District Judge

**Date: April 9, 2019**

18-391-02.wpd